

EXHIBIT NO. 76

BEFORE THE
WISCONSIN PUBLIC SERVICE COMMISSION

INVESTIGATION INTO AMERITECH)
WISCONSIN OPERATIONAL SUPPORT) Docket No. 6720-TI-160
SYSTEMS)

DIRECT TESTIMONY
OF

MICHAEL STARKEY

On behalf of

McLEODUSA TELECOMMUNICATIONS SERVICES, INC.
TDS METROCOM

November 3, 2000

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**
2 **RECORD.**

3 A. My name is Michael Starkey. My business address is QSI Consulting, Inc., 1918
4 Merlin Drive, Jefferson City, Missouri, 65101.

6 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
7 **WITH THE FIRM?**

8 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in the areas of
9 telecommunications policy, econometric analysis and computer aided modeling. I
10 currently serve as the firm's President.

12 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

13 A. This testimony was prepared on behalf of McLeodUSA Telecommunications
14 Services, Inc. ("McLeodUSA") and TDS Metrocom ("TDS").

16 **Q. PLEASE DESCRIBE YOUR EXPERIENCE WITH**
17 **TELECOMMUNICATIONS POLICY ISSUES AND YOUR RELEVANT**
18 **WORK HISTORY.**

19 A. Prior to founding QSI I was a founding partner and Senior Vice President of
20 Telecommunications Services at Competitive Strategies Group, Ltd. ("CSG") in
21 Chicago, Illinois. Like QSI, CSG is a consulting firm providing a wide array of
22 telecommunications services to international telecommunications carriers,
23 consumer advocates and policy makers. In my position with both CSG and QSI I
24 have represented multiple clients in regulatory proceedings across the country

1 involving telecommunications issues ranging from Interconnection Agreement
2 disputes to generic proceedings aimed at evaluating and applying the FCC's Total
3 Element Long Run Incremental Cost methodology (TELRIC).

4
5 Prior to founding CSG, I was most recently employed by the Maryland Public
6 Service Commission as Director of the Commission's Telecommunications
7 Division. Prior to my tenure with the Maryland Commission Staff I was
8 employed by the Illinois Commerce Commission as a Senior Policy Analyst
9 within the Commission's Office of Policy and Planning. I began my career with
10 the Staff of the Missouri Public Service Commission as an Economist in the
11 Commission's Utility Services Division.

12
13 A more complete description of my relevant experience can be found in Schedule
14 1 to this testimony (Exhibit ____).

15
16 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**
17 **WISCONSIN PUBLIC SERVICE COMMISSION (HEREAFTER**
18 **"COMMISSION")?**

19 A. Yes, I have. I have also provided testimony before the FCC and state utility
20 commissions in the following states: Alabama, California, Colorado, Delaware,
21 Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland,
22 Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New Mexico, New
23 York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina,
24 Tennessee, Texas, Washington and Wyoming.

1
2 **Q. DO YOU HAVE DIRECT EXPERIENCE WITH THE RELEVANT**
3 **ISSUES IN THIS PROCEEDING?**

4 A. Yes, I do. Over the past six years I have participated extensively in a number of
5 efforts, throughout the Ameritech region, aimed at unbundling the Ameritech
6 local exchange network. During that same timeframe I have also participated
7 extensively in estimating the costs associated with Ameritech's unbundled
8 network elements and interconnection services. As such, I am aware of the costs
9 that are, and those that are not, recovered via Ameritech's various rates it assesses
10 for access to its unbundled network elements (UNEs). In addition to specific
11 knowledge about Ameritech's UNEs and its costs, I have also, over the past two
12 years, worked directly with a number of competitive local exchange carriers
13 ("CLECs") as they have attempted to understand and manage Ameritech's
14 construction policies and related charges. As a result, I have also participated in a
15 number of regulatory proceedings resulting from an inability on the part of CLECs
16 to successfully negotiate workable solutions to the construction charges that
17 Ameritech has attempted to assess. Specifically, within the last 2.5 years I have
18 participated in the following cases that address Ameritech's construction charges
19 and its policies regarding unbundling network facilities:

- 20 (1) Case No. U-11735 before the Michigan Public Service Commission,
21 (2) Case No. U-12702 before the Michigan Public Service Commission,
22 (3) Case No. 98-0770/0771 before the Illinois Commerce Commission,
23 (4) Case No. 99-0525 before the Illinois Commerce Commission,

1 (5) Case No. 99-1153-TP-ARB before the Public Utility Commission of
2 Ohio,
3 (6) Cause No. 41570 before the Indiana Utility Regulatory Commission,
4 and
5 (7) Docket No. 99-0593 before the Illinois Commerce Commission
6

7 In addition to issues surrounding Ameritech's special construction charges I have
8 also been involved with litigation surrounding special construction charges US
9 West has begun to assess on competitive local carriers (specifically, I have been
10 involved in cases in New Mexico, Idaho, and Oregon).
11

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my testimony is to provide the Commission with information
14 relevant to Ameritech Wisconsin's (hereafter "Ameritech's") *Unbundled Network*
15 *Element Facility Modification & Construction Charge Policy* as it is presented in
16 Ameritech's October 27, 2000 Update (Ameritech/SBC Accessible Letter
17 Number: CLECAM00-153). My testimony will describe for the Commission why
18 it should reject Ameritech's facility modification proposal as it pertains to
19 "special construction" charges Ameritech intends to assess upon CLECs before
20 fulfilling certain unbundled network element (UNE) service order requests. In
21 summary, Ameritech's attempt to assess case-specific, special construction
22 charges is contrary to the Telecommunications Act, the FCC's Local Competition

1 rules, and proper public policy.¹ Ameritech's proposed facilities modification
2 policy, to the extent it results in delays in installing UNEs and assessment of non-
3 recurring special construction charges, is discriminatory allows Ameritech to
4 double recover expenses already recovered in its monthly recurring charges for
5 unbundled loops.

6
7 **Q. IT IS OBVIOUS THAT THIS IS NOT A NEW ISSUE; HOW DID IT**
8 **BEGIN?**

9 A. In the Spring of 1998, competitive local exchange carriers throughout the
10 Ameritech region began to receive from Ameritech requests for special
11 construction charges. Apparently, at about this time Ameritech had initiated an
12 internal policy whereby orders for UNEs that could not be filled with facilities
13 that existed, and that were "connected thru," at the time of the requesting carrier's
14 order, without the need for anything more than a "simple dispatch," would be
15 held. Ameritech did not provide access to the network elements requested in
16 these held orders as Ameritech considered them to be requests for facilities that
17 were not "available" as defined by its interconnection agreements. Consistent
18 with its new policy, after holding an order for facilities it did not define as
19 "available," Ameritech solicited requesting carriers for additional charges
20 ("construction charges") that Ameritech insisted it recover before placing the
21 facilities in an "available" state and filling the order. If the requesting carrier
22 refused to pay Ameritech's "construction charges" (or early in the process also

¹ For purposes of this testimony, the FCC's "*Local Competition Rules*" generally references rules and policies adopted by the FCC in CC Docket No. 96-98.

1 failed to agree to waive rights the carrier had to dispute the construction charges),
2 Ameritech did not fill the order and the requesting carrier could not serve the
3 customer whom the facility was intended to serve.
4

5 Later, however, Ameritech's position on special construction charges "evolved" to
6 the point wherein it would assess special construction charges in only three
7 circumstances:

- 8 (1) Situations wherein a CLEC requires a loop to be "conditioned" for use
9 by advanced services,
- 10 (2) situations where an unbundled loop is ordered in an area served by an
11 integrated digital loop carrier (IDLC) system or remote switching unit
12 (RSU) and, no spare copper or non-integrated facilities are available
13 for purposes of fulfilling the request, and
- 14 (3) situations where "the entire UNE or a major component (*e.g.*, the
15 feeder or distribution portion of a loop) is not physically present (*i.e.*, a
16 "complex dispatch").

17
18 However, while the situations in which special construction charges would be
19 assessed were narrowed, these remaining instances still suffer from the same
20 flaws inherent in the broader application.
21

22 **Q. BEFORE YOU EXPLAIN THE SUBSTANTIVE ISSUES SURROUNDING**
23 **AMERITECH'S SPECIAL CONSTRUCTION POLICY, CAN YOU**
24 **INFORM THE COMMISSION ABOUT HOW OTHER STATE**

**COMMISSIONS IN AMERITECH'S SERVING TERRITORY HAVE
RESPONDED TO AMERITECH'S ATTEMPTS TO INSTITUTE
SPECIAL CONSTRUCTION CHARGES?**

A. I can. On December 22, 1999 the Illinois Commerce Commission issued its Order in Docket No. 99-0525. Docket 99-0525 was a complaint filed by McLeodUSA and Ovation Communications (a McLeodUSA subsidiary). In it's Order in Docket No. 99-0525 the Illinois Commission found that Ameritech had assessed special construction charges in a discriminatory manner and that Ameritech's special construction charges served only to double recover costs Ameritech was already recovering in its TELRIC-based monthly recurring and nonrecurring rates. The following excerpt clearly summarizes the conclusion of the Illinois Commission:

Clearly, the policy of this Commission has been to promote competition among LECs. In light of this policy, the TA96, the FCC's First Report and Order, the Act, and the facts in evidence, the conclusion must be that Ameritech discriminates against Ovation, in the assessment of special construction charges. Because it may be concluded that Ameritech knowingly impeded the development of competition in its service area, Ameritech is found to be in violation of Section 13-514 of the Act.

As a result of Ameritech's violation of Section 13-514, the Illinois Commission required Ameritech to refund to McLeodUSA monies received from special construction charges. In addition, the Illinois Commission established a number of principles that it believed should govern the imposition of special construction charges in the future:

Accordingly, Ameritech may not assess special construction charges on Ovation unless it would assess special construction charges on its own retail customers requesting the same or similar

1 end user services as those serviced being provided to Ovation's end
2 use customer over the requested UNE.
3
4

5 The following excerpt is from the Michigan Commission's Order in Case No. U-
6 11735 at page 24:

7 The record and the pleadings in this proceeding are burdened with
8 elaborate and conflicting assertions made by the parties concerning
9 whether Ameritech Michigan's TSLRIC-based costs and rates
10 already include none, some, or all of the costs that are covered by
11 the additional activities that gave rise to Ameritech Michigan's
12 imposition of special construction charges. The ALJ specifically
13 found that most, if not all, of the special construction charges at
14 issue in this proceeding relate to normal, routine types of costs that
15 are already reflected in the costs and rates determined and
16 approved by the Commission. The Commission agrees.
17

18 In Ohio, in Case No. 99-1153-TP-ARB (an arbitration between Ameritech Ohio
19 and ICG Telecom Group, Inc.), the Commission-assigned Arbitration Panel, in its
20 Report issued January 11, 2000, found as follows:

21 The question in front of the Panel is "*when a facility is not available*"
22 should ICG make a one-time payment to Ameritech for special
23 construction to obtain access to an unbundled loop or should ICG have
24 other options of choosing another method of providing service to their
25 customers. The question does not ask the Panel to establish how
26 Ameritech should determine the availability of unbundled loops. Mr.
27 Starkey testified that the threshold question is what does Ameritech mean
28 when it determines a loop is not available (ICG Ex. 2, at 80). Mr. Starkey
29 raised many arguments in disputing the processes that Ameritech uses
30 when making available loops to competitors. He also suggested that many
31 of the complaints and dispute resolution actions undertaken by NECs are
32 due to Ameritech's special construction processes and charges. Although
33 ICG provided no evidence of Mr. Starkey's allegations in this record, it is
34 nevertheless troubling that this could actually happen. The Panel also
35 points out that Section 251 (c)(3) of the Act requires incumbent local
36 exchange carriers (ILEC) to provision facilities in a manner that is
37 reasonable and non-discriminatory. Under cross-examination, Mr. Starkey
38 stated that ICG's position is, if Ameritech charges special construction
39 charges to its retail customers in the same circumstance, it would be non-
40 discriminatory for Ameritech to charge ICG the same charge for the same

1 facility. ICG would pay exactly what any retail customer would pay (Tr. I,
2 226,227). **The Panel agrees with ICG's position on this issue and**
3 **recommends that the Commission only require ICG to pay for special**
4 **construction in those circumstances that Ameritech charges its own**
5 **end-users.**

6
7 In regard to ICG's claim that Ameritech's special construction charges
8 exceed its TELRIC for provisioning unbundled loops, it is the Panel's
9 understanding that Ameritech's TELRIC pricing is principally based on
10 average costing. Stated another way, **the TELRIC is the average cost of**
11 **an average loop within a geographical area. Thus, the Panel agrees**
12 **with ICG that, when the requested loop is within the criteria that was**
13 **used to determine the TELRIC, which was based on an average loop,**
14 **then Ameritech should only charge the Commission established**
15 **TELRIC rates for that unbundled loop.** However, if Ameritech can
16 clearly prove that the requested unbundled loop is a special loop that will
17 require special "out of the ordinary" construction, and the loop is clearly
18 outside of the TELRIC criteria used to determine the average loop cost,
19 Ameritech should be afforded the opportunity to recover the retail rate for
20 out of the ordinary special construction of facilities.² [emphasis added]
21

22 And, the Ohio Commission added the following to the Panel's original analysis at
23 page 14 of its Arbitration Award:

24 In regard to Ameritech's exception stating that it is contrary to the Act to
25 equate a carrier, such as ICG, who pays TELRIC prices, with a retail
26 customer who pays retail prices, we believe Ameritech continues to miss
27 the point. It is Ameritech's obligation under the Act to provide facilities to
28 ICG in a manner consistent with that in which Ameritech provides
29 facilities to its own retail customers. This is simply what we are requiring
30 Ameritech to do here.
31

32 The Indiana Commission in its Order in Cause No. 41570 determined the
33 following:

34 As stated above, Ameritech Indiana asserts that it is not required to
35 treat CLECs, including McLeodUSA, like its retail customers,
36 because Ameritech Indiana does not provide unbundled network
37 elements to its own retail customers. Ameritech Indiana further
38 argues that the manner in which it recovers its costs from CLECs
39 and from retail customers differs, and, therefore, McLeodUSA is

² Arbitration Panel Report, Case No. 99-1153-TP-ARB, pages 14 & 15.

1 not entitled to the same treatment as an Ameritech Indiana retail
2 customer with regard to special construction. Ameritech Indiana's
3 position fails for two reasons. First, as described above, the FCC's
4 First Report and Order found that, for purposes of providing
5 unbundled network elements, it is not enough that Ameritech
6 Indiana treat all CLECs the same, but Ameritech Indiana must also
7 treat all CLECs in the same manner that it treats itself in order to
8 avoid discrimination. The First Report and Order requires that
9 interconnection and unbundled network elements be "offered
10 equally to all requesting carriers, and where applicable, they must
11 be equal to the terms and conditions under which the incumbent
12 LEC provisions such elements to itself, but also that under the just
13 and reasonable standard they be provided under terms and
14 conditions that would provide an efficient competitor with a
15 meaningful opportunity to compete." Ameritech Indiana's
16 assessment of special construction charges is discriminatory,
17 because as a result, McLeodUSA's customers are treated
18 differently than those served by Ameritech Indiana. As such,
19 McLeodUSA does not have a "meaningful opportunity to
20 compete". [Emphasis added]
21

22 In that same Order the Indiana Commission also concluded:

23 The Commission finds the special construction charges that
24 Ameritech Indiana has assessed against McLeodUSA violate the
25 FCC's First Report and Order because these charges are not based
26 on TELRIC. This conclusion applies equally to Ameritech
27 Indiana's current special construction policy, which imposes
28 special construction charges with respect to unbundling loops that
29 are currently on IDLC and loops that require complex work before
30 they can be unbundled, as well as Ameritech Indiana's pre-January
31 1, 2000 special construction policy.
32

33 **Q. IS THE POLICY EMBODIED IN AMERITECH'S FACILITY**
34 **MODIFICATION & CONSTRUCTION POLICY LETTER SIMILAR TO**
35 **THE POSITION TAKEN BY AMERITECH IN THE CASES YOU'VE**
36 **MENTIONED ABOVE?**

37 **A.** Yes, it is. Though Ameritech has modified its construction charge policy over
38 time, in light of the policy being rejected by each state commission who has

undertaken a proceeding on the issue, Ameritech's recent *Facility Modification & Construction Policy* largely mimics the policy rejected by each of the state commissions discussed above. In a nutshell, Ameritech still maintains that it should be allowed to assess charges on its competitors that are: (1) established solely at the discretion of Ameritech, (2) established outside the scrutiny of a cost proceeding or any other formal process by which a Commission could approve the charges, and (3) must be paid before Ameritech will fulfill its obligation to allow access to UNEs. Likewise, the same problems that doomed Ameritech's policy to failure in Michigan, Indiana, Illinois and Ohio continue to riddle the new policy. Ameritech's policy still allows Ameritech to (1) discriminate against its competitors without regulatory scrutiny, (2) assess charges to recoup costs that are already recovered in TELRIC based rates approved by the Commission, and (3) establish a bureaucratic barrier to entry that significantly slows the progress of its competitors and substantially hampers their ability to effectively market and provision competitive services.

Q. PLEASE BRIEFLY EXPLAIN AMERITECH'S MOST RECENT SPECIAL CONSTRUCTION CHARGE POLICY.

A. Ameritech's new policy as described in its October 27, 2000 *Accessible Letter* provides further information with respect to when Ameritech intends to assess special construction charges. Ameritech's letter divides a number of situations that may occur in provisioning an unbundled loop into four broad categories: (1) simple modification activities for which no special construction charges will apply, (2) complex modification activities for which special construction charges

1 will not apply, (3) complex modifications that will generate special construction
2 charges, and (4) loop conditioning activities which will generate charges.

3
4 **Q. SHOULD AMERITECH BE ALLOWED TO ASSESS SPECIAL**
5 **CONSTRUCTION CHARGES IN ANY OF THE FOUR SITUATIONS**
6 **DETAILED ABOVE?**

7 A. No, it should not. Ameritech should be allowed to assess special construction
8 charges only in situations wherein it meets all of the following criteria: (1)
9 Ameritech can prove that it assesses similar charges in similar situations to its
10 retail customers, (2) the expenses at issue are not already recovered in the
11 TELRIC-based, monthly recurring rates approved by the Commission for the
12 UNE in question, and (3) Ameritech has an approved TELRIC study establishing
13 a reasonable non-recurring charge to be assessed in the situation at issue.
14 Ameritech does not meet these three criteria for any of the circumstances
15 categorized by the four broad categories described above.

16
17 **Q. WHY SHOULD AMERITECH BE REQUIRED TO MEET EACH OF THE**
18 **THREE CRITERIA ABOVE BEFORE BEING ALLOWED TO ASSESS**
19 **SPECIAL CONSTRUCTION CHARGES?**

20 A. Only by meeting each of the three criteria discussed above can competitors and
21 the Commission be assured that Ameritech is prohibited from: (1) discriminating
22 in favor of itself, its retail customers or its affiliates with respect to assessing
23 special construction charges, (2) recovering revenues in excess of the actual
24 forward looking expenses it incurs in offering access to UNEs, and (3) erecting a

1 barrier to entry by administering a cumbersome and unnecessary ordering process
2 by which provision of service to CLEC end users can be unnecessarily delayed
3 and competitors are never sure of the charges they will face in serving any given
4 customer.

5
6
7 **DISCRIMINATION**

8
9 **Q. PLEASE EXPLAIN FURTHER YOUR CONTENTION THAT**
10 **AMERITECH'S SPECIAL CONSTRUCTION CHARGE POLICY**
11 **ALLOWS AMERITECH TO DISCRIMINATE AGAINST ITS**
12 **COMPETITORS.**

13 A. Ameritech's special construction charge policy applies disparate rates, terms and
14 conditions for access to the Ameritech network depending upon the extent to
15 which an order for network facilities is placed by a CLEC or by an Ameritech
16 retail customer. As a result, consistent with its incentive to suppress the ability of
17 its competitors to penetrate its local exchange market, Ameritech charges CLECs
18 special construction charges in numerous situations wherein it does not assess
19 similar special construction charges on its retail customers. Pursuant to this
20 policy, if a CLEC ordered an unbundled loop to serve a specific retail customer,
21 then the CLEC may very well be required to pay Ameritech thousands of dollars
22 in construction charges before being given access to the facilities necessary to
23 serve the retail customer. However, if the same retail customer requested an
24 identical service from Ameritech, Ameritech would in most circumstances

1 provide the service to the customer at the Ameritech standard service charge
2 (absent any construction charges). Obviously, this puts the CLEC in an
3 impossible competitive situation.
4

5 **Q. WHY SHOULD CLECS PAY SPECIAL CONSTRUCTION CHARGES**
6 **ONLY WHEN AMERITECH ASSESSES SIMILAR CHARGES, UNDER**
7 **SIMILAR CIRCUMSTANCES, TO ITS RETAIL CUSTOMERS?**

8 A. The answer is simple: Ameritech is required by the Telecommunications Act to
9 provide UNEs in a non-discriminatory manner. And the term “non-
10 discriminatory” has undergone significant scrutiny with respect to what it means
11 in the context of providing unbundled network elements. For example, Section
12 251(c)(3) of the TA96 requires that Ameritech allow access to its network and is
13 network elements on a non-discriminatory basis:
14

15 (3) UNBUNDLED ACCESS – The duty to provide, to any
16 requesting telecommunications carrier for the provision of a
17 telecommunications service, nondiscriminatory access to network
18 elements on an unbundled basis at any technically feasible point on
19 rates, terms, and conditions that are just, reasonable, and
20 nondiscriminatory in accordance with the terms and conditions of
21 the agreement and the requirements of this section and section 252.
22 An incumbent local exchange carrier shall provide such unbundled
23 network elements in a manner that allows requesting carriers to
24 combine such elements in order to provide such
25 telecommunications services. [emphasis added]
26

27 Moreover, the FCC at Paragraph 218 of its Local Competition Order interprets
28 this portion of the Act to ensure that Ameritech provides unbundled access to
29 competitors under the same rates, terms and conditions that it provides such

access to itself, not simply in the manner in which it provides access to other CLECs:

218. Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself. Permitting such circumstances is inconsistent with the pro-competitive purpose of the Act. Therefore, we reject for purposes of section 251, our historical interpretation of “non-discriminatory,” which we interpreted to mean a comparison between what the incumbent LEC provided other parties in a regulated monopoly environment. We believe that the term “nondiscriminatory,” as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself. In any event, by providing interconnection to a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be “just” and “reasonable” under section 251(c)(2)(D). [emphasis added]

The FCC interprets the term “non-discriminatory,” “as used throughout section 251” to require Ameritech to apply “rates, terms and conditions” equally between third parties as well as itself.

Q. IS AMERITECH’S APPLICATION OF SPECIAL CONSTRUCTION CHARGES CONTRARY TO ITS OBLIGATION TO PROVIDE NON-DISCRIMINATORY ACCESS?

A. Yes, it is. Ameritech makes it such that requests for an unbundled loop that requires certain types of complex dispatch will be accompanied by special construction charges. Hence, the requirement to provide non-discriminatory access would require that Ameritech use the same definition (and apply special construction charges consistently) when one of its other, non-competitor

1 customers orders a loop requiring certain types of complex dispatch. This,
2 however, has not been Ameritech's practice (nor is it my recommendation that
3 retail customers be charged special construction charges in such a circumstance).
4 In the vast majority of cases where Ameritech would assess a competitor special
5 construction charges, it provides the same facilities to retail customers without
6 assessing like charges. As such, Ameritech's application of special construction
7 charges is discriminatory.

8
9 **Q. IS THERE EVIDENCE TO SUGGEST THAT AMERITECH HAS, AND**
10 **WOULD, ASSESS SPECIAL CONSTRUCTION CHARGES ON ITS**
11 **COMPETITORS FAR MORE FREQUENTLY THAN IT DOES ON ITS**
12 **OWN RETAIL CUSTOMERS?**

13 A. Yes, there is. In a proceeding in another jurisdiction, within a data request
14 response, Ameritech provided information suggesting that it had requested, from
15 its retail customers, special construction charges on only a minute fraction of retail
16 customer requests for installation, moves, adds or changes over the years 1997,
17 1998, and 1999. In contrast Ameritech requested special construction charges
18 from McLeodUSA on up to 15% of its total loop requests.

19
20
21 **IDLC AND UDLC ISSUES**

22
23 **Q. HOW ELSE DOES AMERITECH DISCRIMINATE BETWEEN ITSELF**
24 **AND CLECS?**

1 A. It appears that Ameritech intends to assess special construction charges in
2 situations where an unbundled loop is requested in an area served by Integrated
3 Digital Loop Carrier (IDLC) or Remote Switching Unit (RSU) equipment and a
4 spare, non-integrated copper loop cannot be found with which to facilitate a “line
5 station transfer.”

6
7 **Q. SHOULD AMERITECH BE ALLOWED TO ASSESS SPECIAL**
8 **CONSTRUCTION CHARGES ON A CLEC WHEN THE CLEC ORDERS**
9 **AN UNBUNDLED LOOP TO SERVE A CUSTOMER IN AN AREA**
10 **SERVED EITHER BY A REMOTE SWITCHING UNIT (“RSU”) OR AN**
11 **INTEGRATED DIGITAL LOOP CARRIER (“IDLC”)?**

12 A. It should not. Special construction charges associated with providing unbundled
13 loops in areas served by IDLC and RSU technology are not consistent with the
14 FCC’s requirement that rates established for accessing UNEs be set to recover
15 only the TELRIC costs of providing access to the element. Ameritech’s special
16 construction charges in this circumstance would actually be charges meant to
17 recover expenses incurred in modifying its existing network (not a forward
18 looking network required by the FCC’s TELRIC standard) so as to allow it to
19 provision unbundled network elements. As such, these expenses are not forward
20 looking costs consistent with the TELRIC methodology. Instead, these charges
21 are meant to recover short-run marginal costs associated specifically with
22 modifying Ameritech’s current, embedded network technology. If the
23 Commission allows Ameritech to recover both monthly recurring TELRIC costs
24 associated with a forward looking network, and then also allows Ameritech to

1 assess special construction charges for purposes of modifying its existing network
2 to a point where it mimics the forward looking network assumed within the
3 TELRIC studies, the Commission will have effectively adopted an embedded
4 pricing framework. As such, the adoption of forward-looking, economic costs as
5 the proper pricing standard for UNEs will be meaningless. In short, Ameritech
6 will be allowed to effectively recover revenues in excess of its TELRIC costs (*i.e.*,
7 “double-recovery”).

8
9 **Q. PLEASE DESCRIBE THE UNBUNDLED LOOP STUDY SUBMITTED BY**
10 **AMERITECH IN CASE NO 6720-TI-161 AND DETAIL HOW COSTS**
11 **ASSOCIATED WITH DIGITAL LOOP CARRIER EQUIPMENT ARE**
12 **INCLUDED?**

13 A. In its cost studies filed with the Commission in Case No. 6720-TI-161, Ameritech
14 assumes a forward looking network that provisioned loops generally using two
15 different network architectures. First, Ameritech assumes that in some
16 circumstances (*i.e.*, shorter loops), a loop would be provided using a 100% copper
17 facility stretching from the Ameritech central office (C.O.) to the customer’s
18 premises. For longer loops, Ameritech assumes an architecture employing the
19 combination of fiber optic feeder cable, digital loop carrier (DLC) electronics and
20 copper distribution cable. Ameritech further assumes, however, that longer loops
21 serving its retail customer base would be provisioned using Integrated DLC
22 (IDLC) while loops used to provision service to its unbundled local loop
23 customers would use more expensive, Non-Integrated (or “Universal”) DLC
24 (UDLC). As a result of Ameritech’s assumption in this regard, its TELRIC

1 studies generate unbundled loop costs that exceed the costs identified for
2 providing bundled loops.

3
4 **Q. HOW DO THESE ASSUMPTIONS AFFECT THE SPECIAL**
5 **CONSTRUCTION CHARGES AT ISSUE IN THIS PROCEEDING?**

6 A. When a CLEC requests an unbundled loop to serve a customer and that customer
7 (because he/she is currently an Ameritech retail customer) is served by an IDLC,
8 Ameritech attempts to charge the CLEC for expenses incurred in moving that
9 customer from the Ameritech retail IDLC, to a separate UDLC system (even in
10 circumstances wherein Ameritech must construct a new UDLC system). In other
11 proceedings Ameritech contended that the costs associated with this “move” (and
12 or the costs associated with constructing a new UDLC system) were not included
13 in its TELRIC studies and hence, must be recovered via special construction
14 charges.

15
16 **Q. IS THIS APPROPRIATE?**

17 A. No, it isn’t. UDLC is not an appropriate forward-looking technology and
18 Ameritech should not be allowed to recover costs associated with relegating its
19 competitors to this less efficient, more costly architecture.³

20

³ It is worth noting for the Commission that I will, in my testimony in pending Case No. 6720-TI-161 (review of Ameritech’s TELRIC studies), be advocating that the Commission require Ameritech to assume the use of IDLC technology in the provision of unbundled loops. The Commission should recognize that these two cases are intertwined and that the most efficient way to solve the problem created by Ameritech (i.e., the need to move unbundled loops from IDLC to UDLC, for which Ameritech believes it must be allowed to assess special construction charges), is to require Ameritech to assume the use of IDLC technology in the provision of both retail and unbundled loops.

1 **Q. WHY DID AMERITECH CHOOSE TO ASSUME A COMPLETELY**
2 **DIFFERENT TECHNOLOGY FOR PROVISIONING BUNDLED, RETAIL**
3 **LOOPS (IDLC) VERSUS UNBUNDLED LOOPS (UDLC)?**

4 A. In my opinion, Ameritech's primary motivation for this course of action was the
5 fact that employing these two disparate technologies tends to increase the price for
6 unbundled loops while minimizing the costs of providing retail, bundled loops.
7 Obviously, this would give Ameritech a distinct cost advantage in the retail
8 market. However, Ameritech's stated position is that it is not technically feasible
9 to unbundle a loop served by IDLC technology. This results, according to
10 Ameritech, from the fact that an IDLC terminal in the outside plant network must
11 interact directly with Ameritech's central office switch. Hence, Ameritech
12 contends that IDLC technology provides no identifiable demarcation point in the
13 central office whereby Ameritech can identify and unbundle a given loop served
14 by the IDLC outside plant terminal. Therefore, Ameritech argues, it must
15 provision unbundled loops with more expensive UDLC equipment that allows
16 each individual loop to connect to the main distribution frame (MDF) in the
17 Ameritech C.O. In essence, the result of Ameritech's assumption in this regard is
18 that Ameritech assumes, for purposes of developing unbundled loop costs, that it
19 is deploying two different networks, (1) one network using cheaper, more efficient
20 IDLC systems for its retail customers and (2) another network using more
21 expensive, less efficient UDLC systems for its unbundled loop customers.

1 **Q. IS AMERITECH CONTINUING TO GENERALLY DEPLOY UDLC**
2 **SYSTEMS IN CIRCUMSTANCES OTHER THAN THOSE REQUIRED**
3 **TO PROVISION UNBUNDLED FACILITIES?**

4 A. It is not. Ameritech has generally discontinued deploying UDLC systems because
5 they are more costly and less efficient. As a result, Ameritech, on a going-forward
6 basis, is generally deploying only IDLC systems. And, despite the fact that
7 Ameritech is exclusively deploying IDLC technology, Ameritech's TELRIC study
8 erroneously assumes that UDLC is the only forward-looking digital loop carrier
9 technology applicable to unbundled loops. This faulty assumption causes two
10 major problems: (1) it forces the study to include higher DLC costs than would
11 otherwise be necessary thereby overestimating the costs associated with
12 provisioning an unbundled loop, and (2) it leaves the study wanting for more
13 appropriate costs associated with unbundling a loop from an IDLC system (not to
14 be confused with removing an unbundled loop from an IDLC system and
15 transferring it to a UDLC system).

16
17 **Q. SHOULD AMERITECH BE ALLOWED TO DEVELOP COSTS**
18 **ASSOCIATED WITH DEPLOYING TWO DIFFERENT NETWORKS**
19 **WHEN IN REALITY IT DEPLOYS A SINGLE NETWORK?**

20 A. No, it should not. In fact, to do so seems to be directly contradictory to the FCC's
21 rules that state as follows:

22 § 51.511 Forward-looking economic cost per unit.

23 (a) the forward-looking economic cost per unit of an element
24 equals the forward-looking economic cost of the element, as
25 defined in § 51.505 of this part, divided by a reasonable projection

1 of the sum of the total number of units of the element that the
2 incumbent LEC is likely to provide to requesting
3 telecommunications carriers and the total number of units of the
4 element that the incumbent LEC is likely to use in offering its own
5 services, during a reasonable measuring period.
6

7 Rule 51.511 above requires that costs associated with provisioning a given
8 network element (not simply an unbundled element but more generally a network
9 element), must be calculated using the total demand of both unbundled elements
10 and bundled elements.⁴ In this way, the FCC's TELRIC methodology ensures that
11 CLECs are provided costs consistent with the economies of scale and scope that
12 are enjoyed by the Incumbent in providing the entirety of its services (including
13 retail services). As such, to design, within a TELRIC study, costs associated with
14 providing service to retail customers using one technology while using another
15 (more expensive technology) to provide service to unbundled loop customers is in
16 conflict with the FCC's rules. This type of cost modeling robs competitors of the
17 economies of scale and scope that would result from designing a network capable
18 of supporting all services (both bundled and unbundled).
19

20 **Q. ARE YOU SUGGESTING THAT AMERITECH'S CURRENT TELRIC**
21 **STUDIES INAPPROPRIATELY MEASURE COSTS FOR UNBUNDLED**
22 **LOOPS?**

23 A. Yes, I am. It is Ameritech's erroneous assumption that all unbundled loops must
24 be served using UDLC technology that rests at the heart of the issue in this case.

⁴ It is important to note that the Telecommunications Act of 1996 defines a "Network Element" as: "...a facility or equipment used in the provision of a telecommunications service." [Section 3. Definitions. (45)] The term "network element" is not specific to, and indeed is differentiated from (it encompasses), the term "unbundled network element."

Ameritech's assumption isn't accurate and its cost studies proffered in Case No. 6720-TI-161 incorporate this fallacy. It is this fallacy, and the costs Ameritech suggests that it must be allowed to recover to accommodate this fallacy, that results in the special construction charges Ameritech is attempting to recover.

Q. SHOULD AMERITECH BE ALLOWED TO RECOVER EXPENSES ASSOCIATED WITH MOVING A CUSTOMER'S LOOP FROM AN IDLC TO A UDLC VIA SPECIAL CONSTRUCTION CHARGES?

A. It should not. Ameritech can't have it both ways. Ameritech can't assume the use of higher-cost, less-efficient UDLC technology in its TELRIC study (thereby overstating the true forward-looking costs of an unbundled loop), and then also charge CLECs (via special construction charges) for modifying its existing network to make this less efficient network architecture a reality. In such a situation, CLECs pay twice (once in higher TELRIC based rates and again in special construction charges) for a product that is less efficient than that against which they must compete (*i.e.*, an Ameritech integrated retail loop). If the Commission allows Ameritech to institute such a scheme, competitors will not be provided access to the Ameritech network on rates, terms and conditions equal to those which Ameritech itself enjoys in providing service to its own retail customers. And, as Ameritech continues to deploy more and more IDLC technology, which is its intention (see my discussion of *Project Pronto* described later in my testimony), an ever widening gap will develop between the cost structure Ameritech enjoys in providing loops and the costs incurred by its competitors who purchase unbundled network elements.

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Q. IS IT YOUR UNDERSTANDING THAT AMERITECH WOULD TREAT THE MOVING OF A LOOP FROM AN IDLC TO A UDLC AS A COMPLEX DISPATCH SUBJECT TO SPECIAL CONSTRUCTION CHARGES UNDER ITS FACILITIES MODIFICATION POLICY?

A. Yes, I believe Ameritech would assess construction charges in such circumstances. However, I must admit I am not absolutely certain because Ameritech’s policy statement is not altogether clear on that point. I would note that under the “simple modification of facilities” heading, Ameritech indicates it would not charge for installation of a Universal Digital Carrier. In addition, Ameritech’s matrix indicates that for voice grade service in a complex dispatch situation, there would be no related construction charges.

However, the policy clearly states that construction charges will be assessed in the IDLC/RSU circumstances:

In IDLC /RSU situations where no other facility modifications can be made, construction work is required to provide the requested facilities. The work will be done at an additional charge to the CLEC, upon CLEC authorization.

Thus, consistent with Ameritech’s prior special construction policy on IDLC/RSU situations, which I might add was specifically rejected by the Illinois and Indiana commissions, Ameritech would assess charges under its new facilities modification policy.

1 **Q. HOW SHOULD THE PROBLEM OF THE EVER WIDENING GAP**
2 **BETWEEN LOOP COSTS AVAILABLE TO CLECs AND THE MORE**
3 **EFFICIENT IDLC BASED NETWORK AMERITECH RESERVES FOR**
4 **ITS RETAIL USE BE SOLVED?**

5 A. First, we should define the problem. The problem at hand is that Ameritech
6 assumes within its TELRIC studies that all unbundled loops must be provisioned
7 via less efficient, more costly UDLC equipment. However, for its own uses,
8 Ameritech no longer deploys this less efficient UDLC equipment. Instead, for its
9 own use, Ameritech employs more efficient, less costly IDLC equipment and it is
10 deploying more and more of this equipment every year. Second, Ameritech, via
11 special construction charges, attempts to recover expenses associated with
12 removing an unbundled loop from the more efficient technology (IDLC) and
13 placing it on less efficient technology (UDLC). This is the fundamental basis of
14 the problem.

15
16 **Q. NOW THAT WE'VE DEFINED THE PROBLEM, HOW DO WE SOLVE**
17 **IT?**

18 A. In essence, Ameritech by incorporating within its TELRIC studies, and within its
19 Special Construction Charge Policy, the faulty assumptions discussed above, has
20 violated a fundamental construct of the forward looking, economic cost
21 methodology with which it must establish its rates. That is, it has developed costs
22 based upon a "forward looking" network that minimizes the costs of providing
23 retail loops at the expense of providing unbundled loops (*i.e.*, its "forward
24 looking" network does not minimize costs for all services/elements it must

1 produce, but instead, minimizes the costs of bundled loops while increasing the
2 costs of unbundled loops). The result of this error in Ameritech's studies is that
3 CLECs pay more for access to unbundled loops than they should.

4
5 **Q. PLEASE DESCRIBE FURTHER THE FUNDAMENTAL COST**
6 **METHODOLOGY ASSUMPTION THAT AMERITECH HAS VIOLATED.**

7 A. Each forward-looking, economic cost study should be initiated by answering a
8 single question:

9 "What is the most efficient, least cost, forward looking technology
10 that I can deploy for purposes of supporting all services and
11 products for which the network will be used?"
12

13 After this question is answered, then the process of estimating the costs associated
14 with assembling such a network should be undertaken. Ameritech's cost studies
15 filed in Case No. 6720-TI-161, however, do not attempt to answer this question.

16 Instead, Ameritech's studies attempt to answer two independent questions:

17 (1) "What is the most efficient, least cost, forward looking technology that I can
18 deploy for purposes of supporting bundled, retail loop facilities?"
19

20 And,
21

22 (2) What is the most efficient, least cost, forward looking technology that I can
23 deploy for purposes of supporting unbundled loops?
24

25 Obviously, the limitation inherent in the second set of questions is that it ignores
26 the reality of the situation; *i.e.*, that a single network must be used to support both
27 products. By answering the second set of questions, Ameritech's TELRIC studies
28 ignore the fundamental question of what technology most efficiently, and at the
29 least cost, supports the provision of both bundled and unbundled loop facilities

1 over the same network. In doing so, what appears to be a separate category of
2 costs is “created”, *i.e.*, the costs to move a retail loop from the bundled network to
3 the unbundled network for purposes of providing a UNE.
4

5 **Q. YOU MENTION THAT THE PHENOMENON CAUSED BY**
6 **AMERITECH’S FAULTY ASSUMPTION APPEARS TO “CREATE”**
7 **ANOTHER CATEGORY OF COSTS, CAN YOU EXPLAIN THAT IN**
8 **MORE DETAIL?**

9 A. Simply put, the short run marginal costs that Ameritech incurs to move a loop
10 from an IDLC to a UDLC system are generated directly as a result of Ameritech’s
11 refusal to make its network available to CLECs under the same terms and
12 conditions under which it uses that network to provision services to retail
13 customers. Hence, not only are these expenses not appropriately recovered from
14 CLECs because they are short run marginal costs (as I described above), they are
15 also inappropriate because they represent costs Ameritech incurs as a result of its
16 own anti-competitive behavior.
17

18 **Q. CAN YOU EXPLAIN AGAIN WHY COSTS INCURRED IN MODIFYING**
19 **THE EXISTING NETWORK TO A POINT WHERE IT MIMICS THE**
20 **TELRIC NETWORK ARE NOT APPROPRIATELY RECOVERED IN**
21 **UNE RATES?**

22 A. First, allowing ILECs like Ameritech to recover both TELRIC rates, as well as
23 other charges aimed at recovering embedded network modifications, allows those
24 ILECs to recover more than TELRIC costs from purchasers of UNEs. And,

1 though I am not an attorney, recovering costs in excess of TELRIC costs appears
2 to be in direct violation of the FCC's rules.

3
4 Second, allowing ILECs to recover expenses associated with modifying their
5 existing networks to a point where they mimic the forward looking networks
6 included in an appropriately devised TELRIC study frustrates the entire purpose
7 of setting rates based upon forward looking economic costs. Rates based upon
8 forward looking economic costs provides ILECs with an inherent incentive to
9 always deploy the most efficient and least cost technologies for use by purchasers
10 of unbundled network elements.

11
12 **Q. HOW DO TELRIC-BASED RATES PROVIDE ILECS WITH AN**
13 **INHERENT INCENTIVE TO ALWAYS DEPLOY THE MOST**
14 **EFFICIENT AND LEAST COST TECHNOLOGIES FOR PURPOSES OF**
15 **PROVIDING UNBUNDLED NETWORK ELEMENTS?**

16 A. I think it is safe to say that due either to competitive forces or price based
17 regulatory frameworks, ILECs have a financial incentive to use the most efficient,
18 least cost practices, equipment, and technology available to provide service to
19 their retail customers. As the ILECs costs associated with providing retail
20 services drop, both their profitability and their competitive position *vis a vis* other
21 carriers is likely to be enhanced. Unfortunately, these same incentives to do not
22 apply to facilities that the ILECs deploy for the use of their competitors. Because
23 of the monopolistic nature of the ILEC networks, the options competitors have for
24 accessing the end users that will hopefully become their local exchange customers

1 are very limited. Hence, if a competitive carrier needs access to a loop to serve a
2 given customer, it must, in most cases, contract with the ILEC currently serving
3 that customer to purchase the requisite network facilities. Because of this reality,
4 ILECs have a strong incentive to increase the costs of the network facilities
5 deployed to serve their competitors while simultaneously deploying more
6 efficient, least cost facilities for their retail customers, thereby, widening the gap
7 that exists between their own costs of providing service to an end user and the
8 costs their competitors must endure. However, these inherent, anti-competitive
9 incentives can be overcome by requiring ILECs to charge rates to competitors that
10 assume the use of the most efficient, least cost technology currently available (*i.e.*,
11 the technology that is most likely to be deployed to serve retail customers). By
12 setting rates that already assume the use of the most efficient technology available,
13 and ignoring, for UNE pricing purposes, the actual embedded technology
14 deployed by the ILEC, ILECs are provided the proper incentive to deploy the most
15 efficient, least cost technology available for all services/elements they provide.
16 This results from the fact that even if an ILEC (like Ameritech in this case)
17 chooses to use a less efficient technology to serve its competitors, it must absorb
18 the higher costs resulting from that decision. Because its UNE rates must be set
19 based upon the most efficient technology available, and these are the only rates it
20 can assess for accessing UNEs, it is precluded from recovering costs associated
21 with less efficient technology from its competitors. Therefore, in the long run, the
22 ILEC is the only party harmed by choosing less efficient technology, and, as such,
23 is provided the proper incentive to deploy the most efficient technology available

1 throughout its network, even in circumstances where it will be servicing its own
2 competitors.

3
4 **Q. IS THIS BENEFIT OF TELRIC-BASED RATES THWARTED IF**
5 **AMERITECH IS ABLE TO RECOVER EXPENSES ASSOCIATED WITH**
6 **MODIFYING ITS EXISTING NETWORK IN ADDITION TO TELRIC**
7 **COSTS?**

8 A. Absolutely. If Ameritech is allowed to charge both TELRIC based rates as well as
9 additional charges for modifying less efficient technology so that it can effectively
10 accommodate an unbundled loop, why would Ameritech ever remove from its
11 network (or discontinue deploying) technology that causes its competitors to incur
12 higher costs? More specific to the issues at hand in this proceeding, if Ameritech
13 can recover from its competitors the costs of moving retail loops from IDLC and
14 RSU equipment (equipment that lessens the cost of providing retail loops while
15 increasing the costs of providing unbundled loops), why would it ever consider a
16 more efficient network design that minimizes the overall cost of providing all
17 network services/elements (*i.e.*, both bundled as well as unbundled loops)?
18 Finally, why would Ameritech not increase its deployment of IDLC and RSU
19 equipment so as to further reduce the costs of its retail, bundled loops (without
20 devising a method to unbundle those facilities), so as to increase the costs its
21 competitors must pay for unbundled loops?

22
23 **Q. HOW CAN THE COMMISSION EFFECTIVELY ADDRESS THE**
24 **PROPER RECOVERY OF IDLC/RSU COSTS?**

1 A. Earlier, I identified the question that should be answered by a properly constructed
2 TELRIC study:

3 “What is the most efficient, least cost, forward looking technology
4 that I can deploy for purposes of supporting all services and
5 products for which the network will be used?”
6

7 The Commission should, when it evaluates Ameritech’s unbundled loop costs,
8 require Ameritech to construct a loop study in such a way that it adequately
9 answers this question.⁵ In doing so, Ameritech will likely be required to assume
10 the exclusive use of the more efficient, and least cost, IDLC equipment. It will
11 then be required to identify and quantify any forward looking expenses associated
12 with deriving from that IDLC equipment an identifiable circuit (*i.e.*, loop) in the
13 central office where a request for an unbundled loop is made. After completing a
14 study in this regard, Ameritech will have adequately estimated its forward-
15 looking, economic costs of constructing and maintaining a network capable of
16 supporting all loop requests—both bundled retail loops and unbundled loops.
17 However, until Ameritech modifies its study in such a fashion, it should be
18 required to rely upon its current cost studies to recover costs associated with
19 provisioning unbundled loops in areas served by IDLC equipment. Likewise, it
20 should be precluded from recovering from its competitors, via special
21 construction charges or any other mechanism, costs associated with modifying its
22 existing network to provision unbundled loops.
23

⁵ I discuss this issue in greater length in my testimony to be filed in Case No. 6720-TI-161 on December 1, 2000.

1 **Q. YOUR DISCUSSION ABOVE HAS FOCUSED ALMOST EXCLUSIVELY**
2 **ON INTEGRATED DIGITAL LOOP CARRIER EQUIPMENT. ISN'T**
3 **AMERITECH ALSO REQUESTING THAT THE COMMISSION ALLOW**
4 **IT TO CHARGE SPECIAL CONSTRUCTION CHARGES IN**
5 **CIRCUMSTANCES WHEREIN A LOOP IS SERVED BY REMOTE**
6 **SWITCHING TECHNOLOGY?**

7 A. Yes, Ameritech is requesting that it be allowed to assess special construction
8 charges in circumstances whereby a loop is served by remote switching
9 technology and a spare, available pair is not available for purposes of provisioning
10 an unbundled loop.

11
12 **Q. ARE THE ISSUES SURROUNDING LOOPS SERVED BY RSU**
13 **EQUIPMENT SIMILAR TO THE ISSUES SURROUNDING IDLC**
14 **EQUIPMENT?**

15 A. Yes, they are. Generally speaking, Ameritech's purported need for special
16 construction charges associated with situations involving both of these types of
17 equipment are indicative of Ameritech's systemic misunderstanding of the FCC's
18 TELRIC rules and the economic theory supporting the use of rates based upon
19 forward-looking, economic costs. Simply put, Ameritech has made the argument
20 that RSU and IDLC technology are inconsistent with providing unbundled
21 network elements. Therefore, when these particular technologies are encountered
22 in the Ameritech network, wherein a requesting carrier requests access to an
23 unbundled network element served by these devices, Ameritech must undertake
24 some additional effort to provide an unbundled loop. As such, Ameritech

1 believes it should be allowed to recover costs associated with these activities.

2 This isn't correct.

3
4 Ameritech is, pursuant to the FCC's TELRIC rules, allowed to recover costs
5 associated with providing unbundled network elements using the most efficient,
6 least cost network architecture available. As described above, if Ameritech
7 employs (and continues to install) equipment in its network that is inconsistent
8 with a least cost, most efficient network (*i.e.*, a network that supports unbundled
9 loops as easily and inexpensively as bundled loops), it must still provide access to
10 unbundled network elements at rates consistent with the costs incurred by a most
11 efficient, forward looking network (even where it must undertake some unique
12 activities associated with modifying its existing network to provision the
13 unbundled facility). If this construct isn't adhered to, and Ameritech is allowed to
14 charge for activities associated with modifying equipment that does not lend itself
15 to unbundling, the FCC's TELRIC rules, and their intended economic results, will
16 be thwarted. Further, Ameritech will have an even larger incentive to maintain its
17 current practice of installing facilities that do not lend themselves to unbundling.
18 Indeed, as I've said before, allowing Ameritech to charge TELRIC based rates
19 plus construction charges associated with modifying its existing network, is akin
20 to simply setting rates based upon embedded costs.

21
22 **Q. ARE YOU SUGGESTING THAT AMERITECH SHOULD NOT BE**
23 **ALLOWED TO DEPLOY IDLC OR RSU EQUIPMENT IN ITS**

**NETWORK IF THAT EQUIPMENT DOES NOT LEND ITSELF TO
UNBUNDLING?**

A. No. The equipment Ameritech actually uses in its network should be chosen by Ameritech largely at its own discretion (as long as requesting carriers receive access to the network on rates, terms and conditions consistent with that offered to all persons who use that network, including Ameritech itself). However, Ameritech must be required to offer access to unbundled network elements at rates set to recover only those costs specific to the least cost, most efficient technology available. Said another way, Ameritech must be required to set rates based upon costs generated by the least cost, most efficient technology currently available, regardless of the costs associated with providing network elements using the technology it has actually chosen. Absent such a requirement, Ameritech will continue doing what it is doing today. That is, it will deploy its network using the most efficient, least cost technology specific to providing bundled, retail loops despite the fact that it should be deploying its network to reduce the overall cost of producing both bundled and unbundled loops. Then, it will assess on its competitors charges associated with modifying this least cost, bundled network such that its competitors are always at a cost disadvantage when purchasing unbundled elements.

**Q. IF ALLOWED TO CHARGE FOR TRANSFERRING A LOOP FROM
EITHER AN IDLC OR RSU, IS THIS LIKELY TO BE A CHARGE THAT
IS ASSESSED ON A REGULAR BASIS?**

1 A. Yes, it is. This is a big problem and it going to get bigger. If the Commission
2 allows Ameritech to assess special construction charges for transferring loops
3 from IDLC equipment (or RSU equipment) to either copper facilities or UDLC
4 equipment, Ameritech will very quickly drive an ever widening wedge between
5 the loop costs it incurs in providing service to its retail customers and the costs its
6 competitors will incur when they purchase unbundled loops. According to
7 Ameritech's response to data requests asked in another jurisdictions, a significant
8 proportion of Ameritech loops in some of its less densely populated areas are
9 currently served by either IDLC or RSU technology. Hence, the Commission can
10 expect that Ameritech will attempt to assess Special Construction charges on a
11 significant portion of the unbundled loops ordered in these areas (wherein no like
12 charges would be assessed on retail customers).

13
14 In addition there are indications that SBC, Ameritech's corporate parent, is
15 already undertaking a major network initiative, entitled "*Project Pronto*," that will
16 significantly increase the number of IDLC systems deployed throughout the
17 Ameritech network.

18
19 **Q. PLEASE DESCRIBE *PROJECT PRONTO* AND EXPLAIN ITS**
20 **SIGNIFICANCE TO THIS CASE.**

21 A. On October 18, 1999, Ameritech's corporate parent (SBC Communications, Inc.)
22 issued a News Release with the following title: *SBC Launches \$6 Billion*
23 *Initiative to Transform it into America's Largest Single Broadband Provider.*
24 The purpose of the News Release was to inform the public at large about SBC's

1 *Project Pronto*. As described in more detail in the News Release and
2 accompanying material included as Attachment 2 to this Affidavit, *Project Pronto*
3 is SBC's \$6 Billion network "transformation" initiative aimed at "...push[ing]
4 fiber deeper into the neighborhoods it serves and accelerat[ing] the convergence
5 of its voice and data backbone systems into a next-generation, packet-switched,
6 designed-for-the-Internet network." In short, it appears that *Project Pronto*'s
7 primary focus will be the deployment of both HDSL (High Bit Rate Digital
8 Subscriber Line) and ADSL (Asynchronous Digital Subscriber Line) technology
9 for use by both its residential and business customers. According to SBC's News
10 Release:

11
12 At the completion of *Project Pronto*, SBC's goal is to quadruple its DSL
13 deployment – equipping approximately 1,400 central offices with DSL
14 technology, laying more than 12,000 miles of fiber sheath, installing or
15 upgrading 25,000 neighborhood broadband gateways – and reach an
16 estimated 77 million Americans in nearly 35 million customer locations in
17 13 states.
18

19 **Q. HOW DOES THE NETWORK "TRANSFORMATION" THAT SBC**
20 **INTENDS TO UNDERTAKE AS A COMPONENT OF ITS *PROJECT***
21 ***PRONTO* STRATEGY LIKELY TO AFFECT THE ISSUES IN THIS**
22 **CASE?**

23 A. Simply put, *Project Pronto* will significantly increase the number of IDLC
24 systems deployed in the network, thereby, further increasing the circumstances
25 wherein Ameritech will require CLECs to pay special construction charges to
26 honor an unbundling request.
27

1 One of the shortfalls of xDSL technology is that it is significantly constrained, in
2 terms of both speed (or more accurately, bandwidth) as well as simple operational
3 reliability, by the distance the customer resides from the location of the packet
4 switching facilities necessary to provision the service (generally it is assumed that
5 the customer must reside within 18,000 feet of the DSLAM – Digital Subscriber
6 Loop Access Multiplexer - to enjoy consistent xDSL service). As described by
7 SBC in its News Release, one of the focuses of *Project Pronto* will be to
8 overcome this distance restriction by "...push[ing] fiber deeper into its
9 neighborhoods and install[ing] or upgrade[ing] neighborhood broadband gateways
10 containing digital electronics...." The "digital electronics" that SBC references
11 are the exact same Next Generation, Integrated Digital Loop Carrier facilities that
12 are at issue in this proceeding.

13
14 **Q. HOW DO YOU KNOW THAT THE "...NEIGHBORHOOD BROADBAND**
15 **GATEWAYS CONTAINING DIGITAL ELECTRONICS" ARE THE**
16 **SAME NEXT GENERATION, INTEGRATED DIGITAL LOOP CARRIER**
17 **ELECTRONICS AT ISSUE IN THIS CASE?**

18 A. SBC details its use of NGDLC equipment as a component of *Project Pronto*. In
19 combination with its October 18, 1999 News Release regarding *Project Pronto*,
20 SBC also released a number of accompanying documents providing more
21 financial, marketing and technical detail surrounding the new initiative. One such
22 document was entitled *Project Pronto: SBC's Network Vision and Strategy*.
23 Included within that document SBC states as follows:
24

1 SBC has two primary goals: to bring advanced broadband data
2 services to nearly all customers, and to integrate its voice and data
3 networks to more efficiently and effectively transport that traffic.
4 The more than \$6 billion *Project Pronto* initiative should make
5 these goals a reality. The strategy includes plans to:
6

- 7 ➤ Install fiber optics deeper into neighborhood networks and
8 install or upgrade approximately 25,000 neighborhood
9 broadband gateways containing next-generation digital loop
10 carriers. These neighborhood gateways will expand the reach
11 of DSL service by taking the capabilities of the network closer
12 than ever before to customers.
13

14 From this excerpt and a more thorough reading of the *Project Pronto* literature in
15 general, it is clear that SBC intends to overcome the distance limitations of xDSL
16 technology by extensively deploying fiber based, next-generation integrated
17 digital loop carrier (NGDLC) equipment in its outside plant, loop network.
18

19 **Q. WILL *PROJECT PRONTO* SUBSTANTIALLY INCREASE THE NUMBER**
20 **OF LOOPS SERVED BY IDLC?**

21 A. Yes, it will. SBC's News Release states that it will, between now and 2004,
22 deploy approximately 25,000 new NGDLC sites, each of which are capable of
23 serving approximately 700 customer lines. These numbers alone indicate that
24 nearly 17,500,000 customers will be served by NGDLC equipment within the next
25 few years (700 x 25,000). Assume further that xDSL equipment can today
26 provide the bandwidth necessary to support 4 voice grade lines per copper loop.
27 Using such a conservative assumption indicates that the NGDLC equipment SBC
28 intends to deploy will have the capacity to provision as many as 70,000,000
29 access lines (nearly doubling the capacity of its network).

1
2 **Q. ARE THERE OTHER TROUBLING ASPECTS OF SBC/AMERITECH'S**
3 **PLANS TO SIGNIFICANTLY INCREASE ITS DEPLOYMENT OF IDLC**
4 **TECHNOLOGY?**

5 A. Yes, there are. Using IDLC equipment, instead of copper facilities and older, less
6 efficient UDLC systems, is expected to yield enormous cost savings for SBC's
7 retail offerings (see SBC's News Release wherein it states that it will enjoy capital
8 and expense reductions of nearly \$1.5 billion annually from using the new
9 equipment). However, because Ameritech's unbundled loop studies derive costs
10 based on UDLC technology, unbundled loop costs will not enjoy similar
11 decreases. This, in combination with the fact that if Ameritech is successful in
12 this case it will also charge an extra special construction charge anytime an
13 unbundled loop request is made in an area served by one these IDLC systems,
14 makes painfully clear the fact that CLECs will face far higher costs when
15 purchasing unbundled loops than SBC/Ameritech will face when serving the same
16 customer. The Commission should not sanction this departure. It should, at a
17 minimum, maintain that Ameritech be prohibited from charging carriers special
18 construction charges for unbundled loop requests involving IDLC or RSU
19 equipment.

20
21 **LOOP CONDITIONING**
22

1 **Q. SHOULD AMERITECH BE ALLOWED TO RECOVER COSTS IT**
2 **INCURS TO “CONDITION” AN UNBUNDLED LOOP VIA SPECIAL**
3 **CONSTRUCTION CHARGES?**

4 A. No, it should not.

5
6 **Q. WHY SHOULDN’T AMERITECH BE ALLOWED TO RECOVER**
7 **SPECIAL CONSTRUCTION COSTS VIA SPECIAL CONSTRUCTION**
8 **CHARGES?**

9 A. The FCC, on October 8, 1999, released its Memorandum Opinion and Order
10 (MO&O) in CC Docket No. 98-141. The FCC’s MO&O detailed the numerous
11 conditions that both SBC Communications and Ameritech would need to comply
12 with for purposes of receiving the FCC’s approval for their proposed merger. The
13 FCC provided the following condition at paragraph 375 of the MO&O:

14 375. *Loop Conditioning Charges and Cost Studies.* Numerous
15 parties allege that the rates charged by incumbents for conditioning
16 loops are unreasonably high and preclude competitors from
17 offering advanced services to many potential customers,
18 particularly residential and small business customers where the
19 conditioning costs may exceed prospective net income. This
20 condition is designed to ensure that SBC/Ameritech will not erect a
21 barrier to the competitive deployment of advanced services by
22 charging excessive rates for loop conditioning. Within 180 days of
23 the merger’s closing, SBC/Ameritech will file with state
24 commissions cost studies and proposed rates for conditioning loops
25 used in the provision of advanced services, prepared in accordance
26 with the methodology contained in the Commission’s pricing rules
27 for UNEs. Pending approval of state-specific rates,
28 SBC/Ameritech will immediately make available to carriers loop
29 conditioning rates (provided that they are greater than zero)
30 contained in any effective interconnection agreement to which an
31 SBC/Ameritech incumbent LEC is a party, subject to true-up. In
32 addition, subject to true-up, SBC/Ameritech will impose no loop
33 conditioning charges on loops less than 12,000 theoretical feet
34 during this period. Moreover, advanced services providers will

1 have a choice in the amount and extent of conditioning on any
2 particular loop. [emphasis added]
3

4
5 Obviously, the FCC's primary objective in implementing the merger condition
6 described above was to protect carriers from SBC/Ameritech's inherent incentive
7 to overestimate line conditioning charges and thereby successfully erect barriers to
8 the exploding advanced services marketplace. Allowing Ameritech to charge
9 carriers unsupervised special construction charges for line conditioning, in the
10 interim between now and the timeframe within which the Commission determines
11 an appropriate line conditioning rate, is not congruent with this objective.
12

13 **Q. HOW SHOULD AMERITECH RECOVER LINE CONDITIONING**
14 **COSTS BETWEEN NOW AND THE TIME WITHIN WHICH A STUDY**
15 **SUPPORTING ITS LINE CONDITIONING CHARGES (IF ANY) IS**
16 **APPROVED?**

17 A. Ameritech was required to file a cost study supporting any line conditioning costs
18 it intends to recover with the Wisconsin Commission no later than April 4, 2000
19 (180 days after the October 8, 1999 merger closing). And, in fact, Ameritech has
20 filed its line conditioning study in Case No. 6720-TI-161 and soon the
21 Commission will be in the process of determining whether Ameritech's proposed
22 line conditioning charges are reasonable. Also, any line conditioning charges
23 assessed by Ameritech between the time the merger conditions were approved
24 (October 8, 1999) and the timeframe within which its cost study is approved are
25 subject to true-up per the FCC's MO&O. Further, during this interim timeframe,

carriers are also entitled to line conditioning rates equal to those contained in any effective SBC/Ameritech agreement. The Texas Commission in its Arbitration Award in Docket Nos. 20226 and 20272 (released November 1999) approved specific line conditioning rates to be included in the interconnection agreements between SBC and Rhythm Links, Inc. (Rhythms) and Dieca Communications, Inc. (COVAD) respectively. The rates approved by the Texas Commission to be included in the Rhythms and COVAD agreements are as follows:

IV. Removal of Load Coils

- Loop < 12,000 kft.	\$0.00	\$0.00
- 12,000 kft. < Loop < 18,000 kft.	\$25.66	\$22.83
- 18,000 kft. < Loop	\$40.55	\$34.89

V. Removal of Bridged Tap

- Loop < 12,000 kft.	\$0.00	\$0.00
- 12,000 kft. < Loop < 18,000 kft.	\$17.62	\$14.79
- 18,000 kft. < Loop	\$24.46	\$18.81

VI. Removal of Repeaters

- Loop < 12,000 kft.	\$0.00	\$0.00
- 12,000 kft. < Loop < 18,000 kft.	\$10.82	\$9.41
- 18,000 kft. < Loop	\$16.25	\$13.42

Because carriers have the right to avail themselves of the charges detailed above, the Commission should, in this proceeding, find that Ameritech can, at a maximum, assess charges detailed above until it receives approval from this Commission for a cost study supporting other line conditioning charges. These charges should not, however, be assessed as special construction charges at Ameritech's discretion.

DOUBLE-RECOVERY

Q. PLEASE EXPLAIN HOW AMERITECH'S CURRENT UNBUNDLED LOOP STUDY ALREADY RECOVERS COSTS AMERITECH BELIEVES SHOULD BE RECOVERED AGAIN TROUGH SPECIAL CONSTRUCTION CHARGES.

A. Ameritech's TELRIC (and LRSIC) studies are populated with a large number of "factors." These factors are applied throughout the studies in an effort to "gross-up" material investments for purposes of arriving at "total installed costs." For example, if Ameritech purchases a digital loop carrier system for \$1,000, it does not include just that \$1,000 investment into its studies to be recovered from carriers or end users purchasing loops that are supported by the equipment. Instead, Ameritech estimates the total amount of expenses that will be required to procure that piece of equipment for use in the network as well as expenses associated with installing the equipment (both the labor of its own employees and any outside or vendor labor used) and expenses associated with maintaining that equipment over its economic life. Ameritech then adds these expenses to the \$1,000 investment, thereby arriving at a total installed cost (TIC), and includes that amount in its studies to be recovered. Many times, after the application of the multiple factors that are applied to raw investment throughout the Ameritech studies, a piece of equipment that costs \$1,000 to purchase, is included in the Ameritech study at a TIC cost of more than \$5,000 (*i.e.*, the factors "gross-up" the investment by 500%).

Q. HOW ARE THESE FACTORS DEVELOPED?

A. As a general matter, Ameritech identifies its historical expenses incurred in procuring, installing, maintaining, provisioning and otherwise “moving, adding, or changing” equipment in its network (referred to as “moves, adds and changes” - MACs). Ameritech aggregates the expenses associated with these activities by “Field Reporting Codes” (FRCs) that are used to aggregate costs associated with different types of equipment. It aggregates the total expenses associated with these activities over a given period of time (a year for example) and then compares these expenses to the total material price of all of the equipment that received the benefit of those activities in that year. In doing so, Ameritech arrives at a “ratio” of expenses associated with procuring, installing, maintaining, and provisioning the equipment relevant to a given level of material investment (*i.e.*, expenses/investment). For example, the equation below provides a simplistic understanding of how Ameritech arrives at one of its factors, the “In-Plant Factor,” associated with installing FRC-257c (pair gain equipment – *i.e.*, digital loop carrier) equipment:

$$\begin{array}{ccccc}
 \text{Total expenses} & & \text{Total material} & & \text{In-Plant Factor} \\
 \text{associated with} & & \text{investment in} & & \text{which is applied} \\
 \text{installing all digital} & & \text{digital loop} & & \text{to all digital} \\
 \text{loop carrier} & \div & \text{carrier} & = & \text{loop carrier} \\
 \text{equipment installed} & & \text{equipment} & & \text{Material} \\
 \text{in 1999} & & \text{purchased in} & & \text{Investment to} \\
 & & \text{1999} & & \text{arrive at Total} \\
 & & & & \text{Installed Costs}
 \end{array}$$

Ameritech, throughout its unbundled loop study incorporates the use of no fewer than 12 factors derived in a fashion similar to that described above. Ameritech employs these individual factors for purposes of recovering expenses associated

1 with installing equipment, maintaining equipment, warehousing equipment,
2 engineering equipment, network planning and nearly every other activity
3 undertaken by an Ameritech network employee in the normal provision of service.
4 Indeed, nearly every task undertaken by an Ameritech network employee (whether
5 that employee be a field technician, an engineer or a network planner), is booked
6 and tracked to an internal account that is ultimately used to derive a cost factor to
7 be used in Ameritech's TELRIC and LRSIC studies. Through this process,
8 Ameritech ensures that it recovers the costs associated with every activity
9 undertaken by its network personnel, no matter how common or uncommon the
10 activity. Hence, to the extent that Ameritech undertakes an activity in its normal
11 course of installing, equipping and maintaining its network, those costs are
12 included in Ameritech's TELRIC and LRSIC studies.

13
14 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW SUCH COSTS ARE**
15 **INCLUDED IN THE COST STUDIES?**

16 A. Yes, I can. The myriad of "factors" employed by Ameritech are based upon
17 expenses it incurs via the labor of its own employees, as well as third-party
18 employees (or "vendor labor"), that are subsequently booked to its Part 32
19 accounts and then allocated to its many cost studies. These expenses are booked
20 according to the particular activity undertaken by the employee and are tracked by
21 "Activity Code". Each employee, and the work he/she performs as a normal part
22 of his/her job, is categorized into a specific Activity Code Account whereby the
23 expenses incurred for that employee are tracked and eventually booked to specific

1 Field Reporting Codes that match that employee's labor expenses with the
2 network facility investments he/she supports.

3
4 That is, Ameritech takes the costs that are initially captured on an Activity Code
5 basis and books them to USOA accounts. These amounts are subsequently
6 cleared to final accounts (construction accounts and/or Plant operating expense
7 accounts) based on direct labor hours reported to various Field Reporting Codes
8 (FRCs) in accordance with the FCC's Part 32 rules. As an example, Engineering
9 direct labor costs are accumulated on an Activity Code Basis and initially booked
10 to Account 6535, just as Plant direct labor costs are accumulated on an Activity
11 Code basis and initially booked to Account 6534. These costs are subsequently
12 cleared to construction and/or plant expense accounts based on direct labor hours
13 reported to various Field Reporting Codes (FRCs) in accordance with the FCC's
14 Part 32 rules.

15
16 **Q. CAN YOU DESCRIBE IN MORE DETAIL WHAT AN ACTIVITY CODE**
17 **IS?**

18 A. Ameritech, in response to a data request in another jurisdiction, defined its
19 Activity Codes as follows:

20 Activities are cost-causative events or groups of tasks representing
21 what people do in the performance of their jobs. Activity Codes
22 provide the means to accumulate financial information related to
23 the activities performed by individuals. The Cost organization uses
24 Activity Codes for purposes of Labor Rate development as shown
25 in Tabs 21 through 23 of the ACAR.
26

1 **Q. HOW IS THE “FINANCIAL INFORMATION RELATED TO THE**
2 **ACTIVITIES PERFORMED BY INDIVIDUAL[S]” INCORPORATED**
3 **INTO AMERITECH’S COST STUDIES?**

4 A. Again, the Activity Codes are booked to USOA accounts such as 6534 and 6535.
5 Costs in these accounts are then cleared to other plant specific USOA accounts.
6 The accounts that receive these “cleared” expenses are then used to derive the
7 maintenance factor component of the Annual Charge factor (Ameritech derives
8 maintenance factors by taking a ratio of maintenance expenses in the plant-
9 specific USOA accounts divided by total investment in the specific plant types).
10 The maintenance factor is then applied to every dollar of investment assumed
11 within the TELRIC study to ensure that Ameritech recovers not only the amount
12 paid for a piece of equipment (including engineering, furnishing and installing it),
13 but also for the expenses associated with maintaining that equipment. Hence, to
14 the extent that an Ameritech employee performs a task (such as splicing,
15 accomplishing a “dead lug throw,” installing a pedestal, etc.) in the normal course
16 of his/her daily work, and thereby assigns his/her time and expenses to the
17 appropriate activity code, those expenses are captured by the Ameritech TELRIC
18 studies and included in the costs for an unbundled (as well as a retail) loop.

19
20 **Q. HASN’T AMERITECH CLAIMED IN OTHER JURISDICTIONS THAT**
21 **IT REMOVES FROM THESE ACCOUNTS THE EXPENSES**
22 **ASSOCIATED WITH SPECIAL CONSTRUCTION?**

23 A. Yes, it does. Ameritech claims, and correctly so, that the FCC’s rules at Part
24 32.6534 require that Ameritech remove such expenses as follows:

1 § 32.6534 Plant operations administration expense
2

3 (b) Credits shall be made to this account for amounts
4 transferred to Construction accounts. These amounts shall
5 be computed on the basis of direct labor hours. (See §
6 32.2000(c)(2)(ii) of Subpart C).
7

8 However, there is an important point to be made with respect to Ameritech's
9 position in this regard. First, the fact that expenses associated with special
10 construction must be removed from these accounts in order to ensure that
11 Ameritech doesn't double recover expenses when it assesses special construction
12 charges (Pursuant to the FCC's rules), necessarily implies that the activities
13 undertaken specific to special construction and the resultant expenses are
14 currently included unless specifically excluded. And, as I described earlier,
15 historically, Ameritech has only assessed special construction charges on its retail
16 customers in extreme circumstances. For this reason, the extent to which any real
17 level of special construction charge offsets exist in the data supporting
18 Ameritech's unbundled loops is likely minimal. As such, Ameritech's unbundled
19 loop study supporting its TELRIC rates must recover expenses associated with all
20 of the activities undertaken by Ameritech's employees in the normal course of
21 their jobs. These activities, include, but are not limited to, all of the activities for
22 which Ameritech now suggests it must assess special construction charges so as to
23 recover its expenses. Obviously, however, this simply isn't the case and in fact,
24 allowing Ameritech to recover special construction charges for these activities
25 would simply allow Ameritech to double-recover its legitimate expenses.
26
27

1 **BARRIER TO ENTRY**

2

3 **Q. WHAT ARE THE ECONOMIC AND PUBLIC POLICY RAMIFICATIONS**
4 **OF ALLOWING AMERITECH TO ASSESS SPECIAL CONSTRUCTION**
5 **CHARGES AS “UP-FRONT” CHARGES AS OPPOSED TO**
6 **RECOVERING SPECIAL CONSTRUCTION EXPENSES OVER THE**
7 **ECONOMIC LIFE OF THE FACILITY IN THE TELRIC-BASED**
8 **MONTHLY RECURRING CHARGE?**

9 A. To the extent possible, special construction charges should be recovered via
10 monthly recurring, TELRIC based rates. As I described above, to the extent
11 Ameritech believes it is incurring costs for which it is not being compensated via
12 its current TELRIC based rates, its appropriate avenue of recourse is to conduct an
13 unbundled loop study that does include those costs and submit that study to the
14 Commission for approval. To the extent special construction activities concern
15 adjustments to the Ameritech network for purposes of supporting either
16 unbundled loops or retail loops, those expenses must be recovered from all the
17 parties that may use that facility over the facility’s economic life. The only way to
18 ensure recovery in this economically rational fashion is to include the costs of
19 those adjustments in a properly fashioned TELRIC study. Ameritech’s current
20 process of charging the entirety of the expense to the “first man in” penalizes the
21 first CLEC who encounters a facility, or a portion of the Ameritech network, that
22 must be refashioned. And, to the extent the first CLEC must relinquish the
23 facility for whatever reason in a timeframe shorter than the economic life of the
24 facility (for example if the customer chooses another carrier), this process leaves

1 Ameritech with a more efficient, more robust network to be used to serve other
2 carriers and customers at the original CLEC's expense. Neither of these outcomes
3 is conducive to economically efficient cost recovery or good public policy.
4

5 **Q. DOES THE SPECIAL CONSTRUCTION CHARGE PROCESS ITSELF**
6 **ERECT COMPETITIVE BARRIERS?**

7 A. Yes, it does. Mr. Jackson from TDS Metrocom, in his testimony, discusses the
8 difficulties carriers encounter with the simple administration of Ameritech's
9 special construction charge policy. I would only add that my testimony highlights
10 the fact that special construction charges aren't necessary or appropriate in
11 allowing Ameritech to recover its TELRIC-based costs. Hence, instead of
12 attempting to refine the special construction charge policy to address Mr.
13 Jackson's concerns (as Ameritech has apparently attempted to do in the
14 Wisconsin workshops), the more appropriate remedy is to prohibit Ameritech
15 from recovering special construction charges at all, thereby negating the
16 administrative difficulties encountered by both Ameritech and the CLECs.
17
18

19 **NEW BUILD**
20

21 **Q. DOES AMERITECH'S FACILITY MODIFICATION & CONSTRUCTION**
22 **POLICY UPDATE CONTAIN ANY OTHER PROBLEMS?**

23 A. It does. One of the most egregious elements of the Policy Update concerns
24 Ameritech's proposed "New Build Process."

1

2 **Q. WHAT IS AMERITECH'S NEW BUILD PROCESS?**

3 A. Ameritech explains the process as follows:

4 2. New Build

5
6 The New Build process in this policy is designed to address only
7 those situations where there is no telecommunications system in
8 place. Construction of a new telecommunications system to a
9 physical location is required because there are no existing physical
10 facilities in place or planned to be in place to provide
11 telecommunications services to SBC/Ameritech retail or wholesale
12 services.

13
14 Orders for Unbundled Network Elements (UNEs) where no
15 facilities exist because of "New Build " situations will be sent back
16 to the CLEC with a notice requesting the CLEC order services to
17 the new location utilizing the current retail construction policies
18 relating to new buildings, business, and residential developments

19
20 "Greenfield" situation examples:

- 21
22 ▪ New building or buildings
23 ▪ New business or residential development

24
25 Construction of a new building -- No telecommunications systems
26 exist to the new building location

27
28 Therefore,

- 29
30 ▪ The "Existing Facilities Modification Policy" does not apply
31 ▪ The building developer (CLEC can be considered developer) or
32 owner negotiates with SBC/Ameritech retail division to have
33 network telecommunications systems brought into the new
34 building
35 ▪ Once telecommunications facilities into the building are
36 available for service, CLECs can issue orders for UNEs to the
37 new building

38
39
40
41 Construction of a new business development -- No
42 telecommunications systems exist

43 Therefore,

44

- 1 ▪ The "Existing Facilities Modification Policy" does not apply
- 2 ▪ The building developer (CLEC can be considered developer) or
- 3 owner negotiates with SBC/Ameritech retail division to have
- 4 network telecommunications systems brought into the new
- 5 business development
- 6 ▪ Once telecommunications facilities into the development are
- 7 available for service, CLECs can issue orders for UNEs to the
- 8 new building development
- 9

10 **Q. PLEASE IDENTIFY THE ISSUES YOU BELIEVE ARE RELEVANT TO**
11 **AMERITECH'S NEW BUILD POLICY.**

12 A. A review of Ameritech's new policy, along with my prior experience in dealing
13 with this issue in other Ameritech states, indicates that there are at least two
14 primary questions that must be answered by the Commission before approving
15 Ameritech's policy:

- 16 1. Does Ameritech's assessment of construction charges for new builds,
17 in the manner in which it has proposed them, represent a significant
18 departure from the way in which the WPSC and other state regulatory
19 commissions have priced network access services in the past? If so,
20 does good public policy support such a departure?
- 21 2. Are Ameritech's proposed revisions to its construction charge tariff
22 reasonably characterized as an increase in prices for its network access
23 line services?
- 24
- 25
- 26

27 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS WITH RESPECT**
28 **TO THE QUESTIONS ABOVE.**

29 A. My recommendations are as follows:

- 30 1. Ameritech's proposal to levy construction charges for new builds is a
31 significant departure from the way it currently provides local network
32 access line services. Ameritech's proposal shifts the responsibility for
33 construction of the two most expensive components of its loop
34 network (*i.e.*, its distribution and entrance facilities) from itself to its
35 customers. Several of the conditions included in Ameritech's proposal
36 constitute poor public policy. These conditions include (1) the fact that

1 Ameritech will continue to own facilities for which its customers have
2 provided the majority of the capital investment; and (2) the fact that
3 Ameritech will be building significantly smaller portions of network
4 for particular customers while charging the same rates its charges
5 today. Ameritech's proposal to alter the way in which it applies
6 construction charges should be rejected.
7

- 8 2. It is difficult to characterize Ameritech's proposal as anything other
9 than a rate increase in basic local exchange network access line
10 services. Specifically, Ameritech's proposal constitutes a rate increase
11 to those customers who must now pay large upfront charges before
12 Ameritech will extend its network to serve them.
13
14

15 **Q. ARE THE "NEW CONSTRUCTION" CHARGES INCLUDED WITH**
16 **AMERITECH'S NEW POLICY A SIGNIFICANT DEPARTURE FROM**
17 **HOW NETWORK ACCESS RATES HAVE BEEN ESTABLISHED IN**
18 **THE PAST?**

19 A. Yes, they are.
20

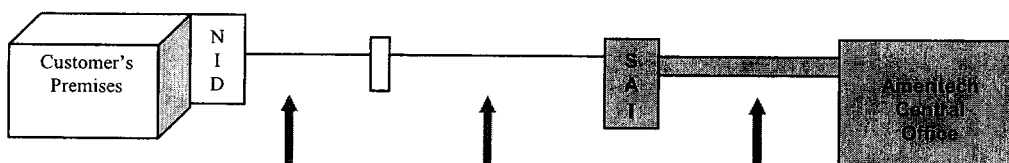
21 **Q. HOW HAVE NETWORK ACCESS RATES BEEN ESTABLISHED IN**
22 **THE PAST?**

23 A. In the past, Ameritech has, through the normal course of its business, expanded its
24 network to provision access lines to its customers. Ameritech has measured the
25 costs of providing network access lines to its customers (both business and
26 residential customers) by averaging the incremental costs associated with
27 provisioning a single network access line within a given geographic region. To
28 date, Ameritech has established rate zones within which it provides access lines at
29 an averaged monthly rate. By averaging its rates, Ameritech, and the Wisconsin
30 Commission, have understood that some individual loops will cost Ameritech

1 more than the average (perhaps significantly more) to provision, and that some
2 loops will cost Ameritech less than the average (perhaps significantly less) to
3 provision. However, on average, Ameritech's rates will recover the costs
4 associated with provisioning loops.

7 **Q. HOW HAVE AMERITECH'S NETWORK ACCESS LINE SERVICES**
8 **BEEN GENERALLY DEFINED IN THE PAST?**

9 A. In the past, Ameritech's provision of a network access line (NAL) has generally
10 been considered to provide a customer a voice grade connection between the
11 customer's premises and Ameritech's central office switch serving the customer's
12 assigned local "exchange." More specifically, Ameritech's access line services
13 have been considered to provide a voice grade connection between Ameritech's
14 local exchange switch and the customer's network interface device ("NID"). The
15 NID is a designated point of demarcation that generally resides on a customer's
16 home or a business's building. The NID specifically designates the point where
17 Ameritech's network ends and the customer's network (generally inside wire)
18 begins. Between the Ameritech switch and the NID is a network comprised of
19 three primary building blocks: (1) feeder facilities, (2) distribution facilities and
20 (3) drop (or entrance) facilities. A simplistic diagram of such a network is
21 provided below:



Drop
(Entrance) Distribution Feeder

And, as I stated before, Ameritech's rates are currently set to recover these costs, on average.

Q. HOW DOES AMERITECH'S PROPOSAL REGARDING THE ASSESSMENT OF CONSTRUCTION CHARGES AFFECT THAT WHICH YOU'VE DESCRIBED ABOVE?

A. Generally, Ameritech's proposal would allow Ameritech to maintain its current monthly and non-recurring rates associated with the provision of a network access line, while at the same time reducing its responsibilities with respect to the amount of network facilities it would be required to provide. In short, pursuant to Ameritech's proposal, its network buildout obligations would now end at the Serving Area Interface (SAI)—the point at which its feeder facilities are connected with its distribution and entrance facilities (Ameritech would be required to provision only those facilities highlighted in gray above). Customers in new build situations would then be required to "negotiate" with Ameritech for purposes of paying Ameritech some amount of construction charge before Ameritech will connect them to the network.

Q. DO YOU BELIEVE AMERITECH'S CONSTRUCTION POLICY CONSTITUTES GOOD PUBLIC POLICY?

1 A. I do not. At its very heart, Ameritech's proposal is an attempt to drastically
2 redefine its responsibilities as a local exchange carrier and to unilaterally
3 discontinue its obligation to serve. In the past, Ameritech's responsibility has
4 been to extend its facilities to serve its customers. It has been compensated for
5 this responsibility via average rates intended to recover its costs over time. Now,
6 Ameritech is proposing that it only bear the responsibility to construct its facilities
7 to the feeder/distribution interface. It would then be the customers' responsibility
8 to install facilities from their premises to the Ameritech network. This is a
9 fundamental shift in responsibility from Ameritech to its customers.

10
11 **Q. WHY DOES THIS SHIFTING OF RESPONSIBILITY CONSTITUTE BAD**
12 **PUBLIC POLICY?**

13 A. Ameritech's proposal constitutes bad public policy for the following reasons: (1)
14 Ameritech is asking its customers to assume the investment risk associated with
15 the construction of facilities, without providing them the benefits that may accrue
16 from that risk; (2) Ameritech's proposal increases its prices associated with
17 network access line services without an in-depth review of its underlying costs;
18 and; (3) Ameritech's proposal gives Ameritech an enormous opportunity to
19 charge customers large, up-front fees with little or no Commission oversight.

20
21 **Q. PLEASE EXPLAIN YOUR CONTENTION THAT AMERITECH'S**
22 **PROPOSAL REQUIRES THAT AMERITECH'S CUSTOMERS ASSUME**
23 **THE RISKS ASSOCIATED WITH NETWORK INVESTMENT**

1 **WITHOUT PROVIDING THEM THE BENEFITS THAT MAY ACCRUE**
2 **FROM THAT RISK.**

3 A. Ameritech is attempting to foist the risks associated with building the most
4 expensive portion of its network on a per-loop basis (*i.e.*, distribution and entrance
5 facilities) onto its customers. While this reversal of responsibility is questionable
6 in and of itself as a public policy issue, the fact that Ameritech requires that
7 customers give those facilities (which they've paid to construct) to Ameritech
8 once they are constructed is untenable.

9
10 **Q. WHY IS THIS REQUIREMENT UNTENABLE?**

11 A. One of Ameritech's primary reasons for its construction charge, or "Build Out"
12 policy, proposal is that in a competitive environment, and given its current rates,
13 the timeframe over which it can be expected to recover investments in new
14 construction (particularly investment that may be specific to a given group of
15 customers – *i.e.*, a subdivision) is too long. Hence, Ameritech's proposal, at its
16 heart, is an attempt to have its customers pay for new construction on the shortest
17 timetable possible (*i.e.*, before they are constructed). This raises at least two
18 major concerns when combined with Ameritech's requirement that it maintain
19 ownership of the new facilities even though the customer has furnished the
20 "investment" required for their construction.

21
22 First, assume a situation where a residential customer builds a house and pays
23 Ameritech to construct facilities to serve it (assume the customer must pay \$1,000
24 up front). Now assume that the residential customer is transferred one year later,

1 sells his/her house, and moves away. Can the customer retrieve some level of
2 his/her initial "investment" from Ameritech because he/she has been in the house
3 for such a short period of time (and, obviously, the facilities for which the
4 customer paid still have economic value)? Reimbursement appears unlikely under
5 Ameritech's proposed tariff. Economically speaking, one could consider this an
6 irretrievable transfer of wealth between the customer and Ameritech resulting
7 from Ameritech's market power in the provision of a highly inelastic service (*i.e.*,
8 basic network access).

9
10 In the past, this problem has been solved by the fact that Ameritech's capital is
11 used to construct the facilities necessary to reach the customer and is recovered by
12 Ameritech over a period of time (likely, the economic life of the asset). Whether
13 it is the original customer or the customer that ultimately purchases the house who
14 is paying for the telephone service provided over those facilities, Ameritech is
15 recovering its investment over time (including a component specific to the risk
16 adjusted cost of the capital required to build the facilities). Under Ameritech's
17 new proposal, however, the original customer would bear the entire "risk"
18 associated with his/her investment. Yet all benefits (*i.e.*, the ownership of the
19 facilities and the rights to assign that ownership) would rest with Ameritech.

20
21 The severity of this problem (*i.e.*, the irretrievable transfer of wealth) can be
22 highlighted by another example. Assume the same customer builds the same
23 house and must pay Ameritech the same \$1,000 in construction charges. Assume
24 that one year later, the customer chooses to be served by a competitive local

1 exchange carrier (CLEC) using an unbundled loop leased from Ameritech to
2 provision service to the customer. The CLEC would, pursuant to its
3 interconnection agreement and/or tariff, be required to pay Ameritech the full
4 price for the unbundled loop used to serve the customer. The price for the
5 unbundled loop would be set based upon Ameritech's TELRIC costs, which
6 include all costs for a loop extending from Ameritech's main distribution frame,
7 which is located in Ameritech's central office/wire center, to the customer's
8 premises (costs up to and including those associated with the NID). However, in
9 this instance, Ameritech would not have "invested" in all facilities up to and
10 including those associated with the NID. The customer would have invested its
11 capital in those facilities stretching from Ameritech's feeder/distribution interface
12 to his/her premises (the most expensive portion of the network). Hence, all else
13 being equal, Ameritech's "cost" of that particular unbundled loop would be less
14 than (likely significantly less than) the costs associated with Ameritech's average
15 unbundled loop. Hence, that customer's unbundled loop should be cheaper than
16 average, allowing the customer to receive service from his/her newly chosen
17 provider at a rate which reflects the lower cost of the unbundled loop (in this way
18 receiving some "return" on his/her initial investment). Unfortunately, because
19 Ameritech will maintain ownership of the facilities stretching from the
20 feeder/distribution interface (even though it did not pay for them), Ameritech will
21 charge the CLEC the full unbundled loop rate and the customer will receive no
22 lesser charge even though he/she made a significant up-front investment.
23

1 The policy issues raised from both of these examples (and scores of others that
2 could be posed) result from the fact that Ameritech is, with its filing, proposing a
3 significant departure from the underlying policies that have shaped the way in
4 which telecommunication services are provided, costed, and priced today.

5
6 **Q. IS AMERITECH SIMPLY ATTEMPTING TO SIDESTEP THE**
7 **COMMISSION'S AUTHORITY TO SET DEPRECIATION RATES AND**
8 **DETERMINE THE RISK ADJUSTED COST OF CAPITAL?**

9 A. It certainly appears that Ameritech is attempting, with this tariff filing, to address
10 its own internal concern over the timeframe within which it will recover its
11 investments in an increasingly competitive environment. This is an issue directly
12 related to depreciation lives, which have been traditionally approved by the
13 Commission. These depreciation lives are used in Ameritech's cost studies to
14 determine the rates for services that will recover depreciation expenses.

15
16 Stated another way, Ameritech's concern regarding the timeframe over which it
17 can recover new investment could be addressed by a filing to reduce the
18 depreciable lives of the facilities assumed within its cost studies and
19 correspondingly increase the rates for services that are intended to recover what
20 would be higher monthly costs. However, Ameritech seems to be attempting to
21 circumvent the commission's authority to make decisions regarding depreciation
22 rates and costs of capital and is instead taking these matters into its own hands.

1 **Q. WHY WOULD YOU CHARACTERIZE AMERITECH'S PROPOSED**
2 **POLICY AS "CIRCUMVENTING" THE COMMISSION'S DECISIONS**
3 **REGARDING DEPRECIATION RATES AND COSTS OF CAPITAL?**

4 A. Ameritech's tariff proposal at issue in this case simply asks that customers pay for
5 a large portion of the local loop that will serve them (facilities stretching from the
6 feeder/distribution interface to the customer's premises) before Ameritech
7 constructs those facilities. In such a circumstance, the rate at which those
8 facilities should be depreciated and the carrying costs associated with Ameritech's
9 capital used to construct those facilities (*i.e.*, the cost of capital) are irrelevant.
10 They are irrelevant because Ameritech will not be recovering its investment in
11 those facilities over time, but will be recovering them up front instead. In essence,
12 Ameritech is proposing that the appropriate depreciable life of those facilities
13 placed via "construction charges" is instantaneous (*i.e.*, all investment is
14 recovered before it is deployed) and that the risk adjusted cost of capital
15 associated with funding those investments is so high that Ameritech is unwilling
16 to deploy its capital to build those facilities, but is instead requiring the customer
17 to provide its own. This is a vast departure from anything of which I am aware
18 that the Commission has approved to this point.

19
20 **Q. HOW WOULD YOU CATEGORIZE AMERITECH'S CONSTRUCTION**
21 **CHARGE POLICY?**

22 A. I find it difficult to characterize Ameritech's proposal as anything other than a rate
23 increase for network access line services. While Ameritech's monthly rates may
24 not be increasing, a significant number of customers will be required to pay an

1 additional up-front charge required to reach the Ameritech network and avail
2 themselves of these services. And, all of the available information indicates that
3 these up-front charges are likely to be significant.
4

5 **Q. CAN YOU QUANTIFY THE RATE INCREASE YOU BELIEVE**
6 **CUSTOMERS WILL EXPERIENCE IF THE COMMISSION ADOPTS**
7 **AMERITECH'S PROPOSED TARIFFS?**

8 A. Unfortunately, I can't. By relying upon charges subject to a "case-by-case"
9 analysis, it is impossible to tell how much customers will be required to pay to
10 receive a basic residential (or business) network access line from Ameritech if
11 Ameritech's proposal is accepted. It appears that every circumstance would be
12 different and that the rate would ultimately be set based upon Ameritech's sole
13 discretion. As I characterized it earlier in my testimony, this is akin to providing
14 Ameritech a "blank check" with respect to the charges it can assess on its local
15 exchange customers.
16

17 **Q. YOU SUGGEST THAT AMERITECH'S PROPOSAL GIVES IT AN**
18 **ENORMOUS OPPORTUNITY TO CHARGE CUSTOMERS LARGE, UP-**
19 **FRONT FEES WITH LITTLE OR NO COMMISSION OVERSIGHT.**
20 **CAN YOU EXPLAIN YOUR POSITION IN MORE DETAIL?**

21 A. Ameritech's construction policy requires the customer to pay for all costs, with
22 the exception of the cost Ameritech intends to recover via the "standard
23 allowance," associated with constructing facilities spanning from Ameritech's

1 serving area interface to the customer's premises. Giving Ameritech the sole
2 discretion to manage this process raises two immediate and major concerns.

3
4 First, the placement of the serving area interface is within the sole discretion of
5 Ameritech. Under its current proposal, Ameritech would have an obvious
6 incentive to place its SAI, on a going-forward basis, as close to its own central
7 office as possible. In this way, its customers would be responsible to pay, through
8 up-front construction charges, for larger and larger portions of the loop network.
9 Correspondingly, Ameritech would be required to provide fewer and fewer
10 facilities (the costs of which would continue to be recovered through existing
11 monthly recurring rates). Obviously, such a circumstance would significantly
12 reduce Ameritech's risks associated with the deployment of its own capital (as it
13 could use the capital of its customers to construct larger portions of its network)
14 while at the same time significantly enhancing its profitability (by reducing the
15 amount of facilities it is required to provide while at the same time maintaining its
16 existing rates).

17
18 Second, it appears that very little if any Commission oversight is expected with
19 respect to Ameritech's development of the construction charges its customers will
20 be required to pay. This is a significant departure from the objective Commission
21 input, oversight, and approval that has been integral to setting basic local
22 exchange rates in the past, and is a process that should be of great concern to the
23 Commission and to consumers.

1 **Q. GIVEN ALL THAT YOU'VE DESCRIBED ABOVE, DO YOU BELIEVE**
2 **THAT THE COMMISSION SHOULD APPROVE AMERITECH'S**
3 **CONSTRUCTION POLICY FOR NEW BUILD SITUATIONS?**

4 **A. I do not.**

6 **Q. PLEASE SUMMARIZE WHY YOU BELIEVE AMERITECH SHOULD**
7 **NOT BE PERMITTED TO ASSESS CONSTRUCTION CHARGES TO**
8 **CUSTOMERS (INCLUDING CLECS) IN NEW BUILD SITUATIONS?**

9 **A. Ultimately, Ameritech's has an obligation to serve, and I do not believe that it is**
10 appropriate for CLECs or retail customers to be assessed construction charges in
11 new build situations (especially under the terms and conditions Ameritech
12 proposes). The mere fact that a customer is the first to request service in an area
13 should not subject that customer to construction charges. This discriminates
14 against the first customer to the advantage of all subsequent customers in a new
15 build area. Further, Ameritech's build out policy is nothing more than a thinly
16 disguised attempt to increase rates without Commission oversight—and it should
17 be noted that both the Illinois and Michigan commissions rejected Ameritech's
18 proposal to assess charges in such situations.

20 **Q. ULTIMATELY, DO YOU BELIEVE THAT IT IS IMPORTANT FOR THE**
21 **COMMISSION TO SPECIFICALLY DIRECT AMERITECH NOT TO**
22 **ASSESS SPECIAL CONSTRUCTION CHARGES WHEN**
23 **PROVISIONING UNEs FOR A CLEC?**

1 A. Yes, given Ameritech's pattern of behavior since the Michigan PSC first ruled
2 that Ameritech's special construction policy was unlawfully discriminatory
3 (nearly 2 years ago), I believe it is very important that the Wisconsin PSC
4 specifically prohibit Ameritech from attempting to assess special construction
5 charges without prior commission approval. Otherwise, Ameritech appears intent
6 on continuing to devise new construction charge policy iterations as fast as
7 Commission orders are issued rejecting Ameritech's current policy. Given that
8 Ameritech has vastly greater resources, it is patently unfair to CLECs to
9 continually relitigate virtually the same issue over and over whenever Ameritech
10 chooses to publish a new construction policy and attempt unilateral
11 implementation.

12
13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 A. Yes, it does.
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